

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LAHONTAN REGION**

In the matter of Jeff Murphy)	
and J. M. Concrete Pumping Service:)	
Violation of Waste Discharge Prohibitions prescribed in)	COMPLAINT NO. 6-98-45
the <i>Water Quality Control Plan for the Lahontan Region</i>)	FOR ADMINISTRATIVE
for the Unauthorized Discharge of Waste Concrete and)	CIVIL LIABILITY
Petroleum Products in the vicinity of Sunnyside Marina)	
and thence to Lake Tahoe, Placer County)	

**ISSUED TO J. M. CONCRETE PUMPING SERVICE, YOU ARE HEREBY GIVEN
NOTICE THAT:**

1. You are charged with a violation of provisions of law, or orders of the California Regional Water Quality Control Board, Lahontan Region, for which the Regional Board may impose administrative civil liability pursuant to Section 13385 of the California Water Code.
2. Unless waived, a hearing on this matter will be held before the Regional Board within 60 days following the issuance of this Complaint. You, or your representatives, will have an opportunity to address and contest the allegations in this Complaint and the imposition of civil liability by the Regional Board. An agenda showing the time set for the hearing will be mailed to you not less than ten days before the hearing date.
3. At the hearing, the Regional Board will consider whether to affirm, reject, or modify the proposed civil liability, or whether to refer the matter to the Attorney General for recovery of judicial civil liability.

ALLEGATIONS

4. Jeff Murphy is the owner of J. M. Concrete Pumping Service, Carnelian Bay, Placer County. For the purposes of this Complaint, the J. M. Concrete Pumping Service is referred to as the Discharger. On May 20, 1998, the Discharger was employed to pump concrete for a project at the Sunnyside Restaurant, located adjacent to Lake Tahoe in the unincorporated community of Sunnyside, Placer County. During the Discharger's operation, small amounts of concrete and hydraulic oil from a leaking concrete pump were spilled onto a paved parking area on the southerly side of the Restaurant building. The Discharger's employee used hot tap water to wash the spilled concrete and hydraulic oil from the pavement at the completion of the job. The wash water traveled a short distance to the edge of the parking lot, flowed a short distance in a depression adjacent to a sheet pile wall at the Sunnyside Marina, and discharged into the Sunnyside Marina. The oily discharge dispersed into a sheen, or thin oil layer, upon the water in the Marina, and subsequently dispersed into the open waters of Lake Tahoe.

5. The Discharger violated waste discharge prohibitions contained in the *Water Quality Control Plan for the Lahontan Region* (Plan). The Plan was adopted pursuant to Section 13243 of the California Water Code and states the following discharge prohibitions for the Lake Tahoe Hydrologic Unit:

- “2. The discharge of any waste or deleterious material to surface waters in the Lake Tahoe Hydrologic Unit is prohibited.”
- “3. The discharge of waste earthen material, or of any other waste as defined in Section 13050(d) of the California Water Code, which would violate the water quality objectives of this Plan, or otherwise adversely affect the beneficial uses of water designated by this Plan, is prohibited.”
- “7. The discharge, attributable to human activities, of solid or liquid waste materials, including soil, silt, clay, sand, and other organic and earthen materials, to the surface waters of the Lake Tahoe Basin, is prohibited.”

Concrete is a mixture of earthen materials (powdered rock and clay materials, sand, and gravel). Petroleum products are deleterious materials. The discharge violated water quality objectives for oil and grease stated in the Plan: “Waters shall not contain oils, greases, waxes or other materials in concentrations that result in a visible film or coating on the surface of the water, or on objects in the water, that cause nuisance, or that otherwise adversely affect the water for beneficial uses.” The Discharger violated the above-cited prohibitions and objectives when waste wash water containing petroleum products and concrete residue was discharged to Lake Tahoe on May 20, 1998.

6. The following additional facts, as collected by Regional Board staff, are the basis for the violations in this matter:

At approximately 11:30 a.m. on May 20, 1998, Regional Board staff arrived at the Sunnyside Marina to perform a routine inspection of the marina facilities, which are regulated under waste discharge requirements issued by the Regional Board. The marina manager at Sunnyside Marina is Mike Shenone. Mr. Shenone immediately reported to Regional Board staff that a discharge of oily water was affecting the water quality in the Sunnyside Marina.

The asphalt parking lot adjacent to the Marina had been recently painted with an asphalt sealer, such that the dry sealed surface was a deep black color. The Discharger had been employed as a subcontractor to pump three cubic yards of concrete for a project near the Marina, and had staged his operation on the clean pavement. During the concrete pumping operation, small amounts of concrete were spilled and splattered on the pavement, and hydraulic oil from a leaking concrete pump was spilled on the pavement. The Discharger has reported that the amount of spilled hydraulic oil was approximately one pint or less. At the completion of the job, an employee of the Discharger received a request from the primary contractor to clean the pavement using a hot water hose attached to the Sunnyside Restaurant building. The Discharger’s employee proceeded to spray the pavement with the hot water and washed the waste residues to the sheet pile wall at the Marina, near the edge of the parking lot. The wash water then discharged into the Sunnyside Marina. Within minutes, Mr. Shenone observed an oily sheen within the

Sunnyside Marina, became aware of the washing activity, and asked the Discharger to cease the activity. The Discharger then left the job site.

Regional Board staff arrived approximately 15 to 20 minutes after the washing had occurred, and observed that the discharge of oil had spread out to cover approximately half of the Marina water surface and was drifting out to Lake Tahoe through the water entrance to the Marina. Acting on a request from Regional Board staff, Mr. Shenone took action to abate the discharge. Oil absorbent booms were placed across the water entrance of the Marina, and Marina employees attempted to remove the floating oil with oil-absorbent towels. The booms appeared to work effectively at preventing the oil discharge at the Marina entrance, but the towels, which are designed to absorb certain hydrocarbons and not absorb water, did not perform effectively to remove the discharged oil. Regional Board staff observed this cleanup activity and took several photos of the discharge and the paved area.

The Sunnyside Marina is partly enclosed by a rock-crib pier which allows water to flow into and out of the Marina area under the influence of wind, waves, and lake currents. The oil, which was not removed by the booms at the Marina entrance, eventually dispersed to Lake Tahoe.

At 3:45 p.m. on May 20, 1998, the Discharger returned a telephone message from Regional Board staff, provided information concerning the incident, and indicated that he would provide a letter (spill report) to the Regional Board in response to a request from Regional Board staff. A letter was received from the Discharger on June 2, 1998, and is included as Attachment "A" of this Complaint.

PROPOSED CIVIL LIABILITY

7. For the discharge of wash water containing hydraulic oil and concrete residue to Lake Tahoe, the Regional Board may impose civil liability pursuant to Section 13385(c)(1) of the California Water Code: for discharges in violation of waste discharge prohibitions adopted pursuant to Section 13243 of the California Water Code, the Discharger may be liable in an amount not to exceed ten thousand dollars (\$10,000) for each day in which the violation occurs. The waste discharge prohibitions specified in the Plan, and cited above, were adopted pursuant to Section 13243 of the California Water Code.
8. In this matter, the maximum civil liability under Section 13385 could amount to ten-thousand dollars (\$10,000) for the May 20, 1998 discharge of waste wash water containing hydraulic oil and concrete residue to Lake Tahoe.
9. The Executive Officer of the Regional Board took the following factors into account, as set out in Section 13385 (e) of the California Water Code, in recommending the amount of the administrative civil liability:
 - a. The nature, circumstances, extent, and gravity of the violations;

This incident involves the deliberate washing of waste materials to Lake Tahoe in violation of a Plan prohibition and water quality objectives. The circumstances of the incident show a lack of judgment on the part of the Discharger.

- b. The violator's ability to pay;

The violator is a small business. While the Regional Board staff has no specific information about the Discharger's business, the proposed civil liability amount is substantially less than the maximum amount.

- c. Any prior history of violations;

The Discharger has no known history of violations.

- d. Degree of culpability;

The Discharger intentionally discharged the waste materials to Lake Tahoe.

- e. Economic savings or benefit, if any, resulting from the violation; and

The Discharger may have realized an economic benefit from the savings in personnel time and money to clean the waste up properly, using cleanup practices which did not involve a discharge of waste to surface waters.

- f. Other matters that justice may require.

Regional Board staff have spent time investigating this matter and issuing the administrative civil liability complaint.

10. The Executive Officer of the Regional Board proposes that administrative civil liability be imposed by the Regional Board in the amount of **fifteen-hundred dollars (\$1500)**, pursuant to Section 13385 of the California Water Code.

WAIVER OF HEARING

11. You may waive the right to a hearing. If you choose to waive the hearing, please check and sign the waiver and return it to the following address with a cashier's check or money order for the amount of civil liability proposed in paragraph 10, above:

California Regional Water Quality Control Board
Lahontan Region
2092 Lake Tahoe Boulevard
South Lake Tahoe, CA 96150

In accordance with 40 Code of Federal Regulations, Section 123.27(a), a 30-day public comment period will be required for a proposed settlement of administrative civil liability.

J. M. CONCRETE PUMPING SERVICE - 5 -
Placer County

ADMINISTRATIVE CIVIL LIABILITY
COMPLAINT NO. 6-98-45

Ordered by: _____ Dated: _____
HAROLD J. SINGER
EXECUTIVE OFFICER

Attachment "A": May 31, 1998 letter from Jeff Murphy, J. M. Concrete Pumping Service